

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12243 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
 2. To be referred to the Reporter or not? -
 3. Whether Their Lordships wish to see the fair copy of the judgement? -
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge?
-

MUKESHBHAI NAGJIBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12243 of 1994
MR RK MISHRA for Petitioners
MR SP HASULKAR, Addl. Solicitor. for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2, 3, 4, 5
-

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/09/98

ORAL JUDGEMENT

By means of this petition the petitioners sought for prohibitory writ restraining the respondents authorities from terminating the services of the petitioners by acting on the basis of the circular issued by the respondent - Director dated 6-4-1994 annexed to the petition at Annexure - E and for giving time scale grade salary to the petitioners admissible to the cadre

of Class-IV with other usual allowances which is being paid to other Class-IV employees similarly situated and similarly recruited persons and all consequential benefits.

2. The Government by the Circular dated 1-4-1992 directed all the District Backward Class Welfare Officers to fill in the posts which were vacant in Adarsh Nivasi School in the cadre of scheduled caste and scheduled tribes as per the Rules and Regulations. The information chart was also sent showing the vacancies of the employees in Adarsh Nivasi School and also including the schools which are granted sanction but yet not started. All the District Backward Class Welfare Officers were directed to prepare a list of actual vacant posts, out of granted seats in Adarsh Nivasi School under their Districts to fill in the vacancies through District Recruitment Committee. The District Backward Class Welfare Officers were also directed to start process immediately for the same and complete it within the time limit after going through the procedure therefor. For Banaskantha District 20 posts were declared out of them three posts were for peon, two posts for Lab. Assistants, four posts were for security guard, four posts were for cook, three posts were for Kitchen Assistant, three posts were for Hamal and one post was for Sweeper. The respondents authorities have asked to forward the names of the area. The Social Welfare Officers and Employment Exchange Officers were also directed to fill in the posts of peon, "Rashoda Kamdar", Chowkidar and Hamal-cum-peon. The interview for the said post were held by the Selection Committee consisting of the District Backward Class Welfare Officer and one officer from the respondent Director and Principal of respondent school.

3. The petitioners were selected for the post of Class-IV employees as stated above after going through the interview procedure and the petitioners were appointed in the pay scale of Rs. 750-940 prevailing time scale grade as applicable in the Class-IV employees at the relevant time. The petitioners were given appointment as daily wager till approval of the concerned authorities. The petitioners' appointment were on clear vacancies and the posts were created by the Government and the respondent - Director has not issued approval to the appointment of the petitioners though one Bachubhai Dungarbhai Solanki much junior to the petitioners was placed in time scale grade salary and he was regularised by the order dated 17-10-1992. The petitioners were being given salary of Rs. 560/- only which is even below

the Payment of Minimum Wages Act. The petitioners were also not given the benefit of national day, public holiday, even weekly holiday. When the petitioners made a joint representation for making them permanent from the date of their appointment in the time scale grade salary payable to Class IV employees permissible under the Rules and Regulations. Instead of regularising their services and granting them benefits of time scale grade salary, the respondent - Director issued Circular dated 6-4-1994 whereby he directed all the District Backward Class Welfare Officers with those of the Principals of Adarsh Nivasi School to terminate services of the employees because they demanded for their regularisation in service and not to take any work from old employees after their services have come to an end on completion of academic year and further directions were given to appoint new persons in place of the petitioners and other employees.

4. Contention of the learned advocate for the petitioners that the petitioners were appointed by the Selection Committee in a regular manner on clear vacancy. The petitioners' status as daily wagers was made subject to the approval of the authority concerned but the authority concerned has not issued any direction for approval of the petitioners' regularisation and they continued in service as daily wagers though their junior Bachubhai Solanki was made regular and that is in violation of fundamental rights given under Article 14 and 16 of the Constitution of India. When the petitioners made the representation to the respondent Director for giving time scale grade salary, the respondent - Director passed the general order directing all the District Backward Class Welfare Officers and the Principal of Adarsh Nivasi School to terminate the services of the employees who were making demand for regularisation of their service and for time scale grade salary.

5. The appointment of the petitioners was not subject to any condition of availability of any regular employee. The petitioner and other employees were appointed on clear vacant posts by selection committee and no order for terminating the services of the petitioners and other employees can be passed. This Court protected the petitioner's service by the interim order dated 27-10-1994 directing the respondents not to terminate services of the petitioner.

6. Learned counsel for the State could not justify the actions of the respondent - Director which are prima-facie illegal and not sustainable in the eye of law

at all. The order dated 21st July, 1992 was passed after considering the circular of the Director dated 1-4-92 and and day work (rojkam) of District Recruitment Committee dated 25th, 26th, 27th and 28 of May, 1991 and the Resolution of the Finance Department dated 18-6-92. By that order, the petitioners and other employees were appointed on the post mentioned in the Circular 1-4-1992 as daily wager till approval of the Director. But the respondent - Director has not passed the order approving the appointment of the petitioners and other employees. Therefore, they could not be regularised.

I have given anxious thought to the submissions made on behalf of the parties. It is a fault on the part of the respondent Director and in case services of the petitioners and other employees were satisfactory their services could not have been terminated. It is not stated by the learned counsel for the State that the services of the petitioners were not satisfactory hence their services were liable to be terminated. The services of the petitioners and other employees were subject to the condition that they will be appointed as daily wager till approval of the respondent - Director. The respondent Director instead of approving and regularising the services of the petitioners and other employees, passed the order directing the Subordinate Authorities to terminate the services of the petitioners and other employees who claimed for regularisation of their services and giving them time scale grade salary. The petitioners are still working under the protection of the interim order passed by this Court on 27-10-94. On the face of it, the order of the director is arbitrary, illegal and not sustainable in the eye of law.

7. Accordingly, the petition is allowed. The respondents are directed to regularise the services of the petitioners from the date of the Circular dated 6-4-94. The petitioners shall also be given time scale grade salary admissible under the relevant Rules payable to the regular employee of Class-IV category, with all consequential benefits.